No. .....

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

LOCKE MILLER,
Petitioner,

vs.

MICHAEL J. KIRWAN,
Respondent.

APPENDIX

FEDERAL CODE, TITLE 18.
Section 208. Political Contributions; Solicitation.

"It is unlawful for any Senator or Representative in, or Delegate or Resident Commissioner to, Congress, or any candidate for, or individual elected, as Senator, Representative, Delegate, or Resident Commissioner, or any officer or employe of the United States, or any person receiving any salary or compensation for services from money derived from the Treasury of the United States, to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employe, or person."

Section 209. Same; Not to be Received in Public Offices.

"No person shall, in any room or building occupied in the discharge of official duties by any officer or any employe of the United States mentioned in Section 208 of this Title, nor in any navy yard, fort, or arsenal, solicit in any manner whatever or receive any contribution of money or other things of value for any political purpose whatever."

Section 210. Same; Immunity from Official Proscription.

"No officer or employe of the United States, mentioned in Section 208, of this Title, shall discharge, or promote, or degrade, or in any manner change the official rank or compensation of any other officer or employe, or promise, or threaten so to do, or for giving or withholding or neglecting to make any contribution of money or valuable things for any political purpose."

Section 211. Same; Making to Officials.

"No officer, clerk, or other person in the service of the United States, shall, directly or indirectly, give or hand over to any other officer, clerk, or a person in the service of the United States, or to any Senator or Member of, or Delegate to Congress, or Resident Commissioner, any money or other valuable things on account of or to be applied to the promotion of any political object whatever."

Section 212. Same; Punishment.

"Whoever violates any provision of Sections 208 to 211 of this title, shall be fined not more than $5,000.00, or imprisoned not more than 3 years or both."

Section 213. Same; Removal from Office.

"Any executive officer or employe of the United States not appointed by the president, with the advice and consent of the senate, who shall request, give to, or receive from, any other officer or employe

of the government, any money or property or other things of value for political purposes shall be at once discharged from the service of the United States."

Section 199. Accepting Bribe by Member of Congress.

"Whoever, being elected or appointed a Member or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, directly or indirectly, ask, accept, receive or agree to receive, any money, property, or other valuable consideration, or any promise, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value to him or to any person with his consent, connivance, or concurrence, for his attention to, or services, or with the intent to have his act, vote, or decision influenced on any question, matter, cause or proceeding, which may at any time be pending in either House of Congress or before any committee thereof, or which by law or under the Constitution may be brought before him in his official capacity, or in his place as such Member, Delegate or Resident Commissioner, shall be fined not more than three times the amount asked, accepted, or received, and imprisoned not more than three years; and shall moreover, forfeit his office or place, and thereafter be forever disqualified from holding any office of honor, trust or profit under the Government of the United States."

Section 88. Conspiracy to Commit an Offense Against the United States.

"If two or more persons conspire to commit an offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000.00, or imprisoned not more than two years or both."

SECTIONS OF GENERAL CODE OF OHIO

Section 475-166. Contest of Election.

"The nomination or election of any person to any public office or party position, or the approval or rejection of any issue or question, submitted to the voters, may be contested by qualified electors of the state, county or political subdivision, as the case may be, upon the terms and conditions as hereinafter provided. a. In the case of an office to be filled, or an issue to be determined by the voters of the entire state, or for the offices of members of the Congress of the United States, or for judicial offices higher than that of court of common pleas, or for an office to be filled, or an issue to be determined, by the voters of a district larger than a county, said contest shall be heard and determined by the chief justice, or a justice of the supreme court assigned for that purpose by the chief justice; except that in a contest for the office of chief justice of the supreme court, such contest shall be heard by a justice of such court designated by the governor. b. In the case of all other offices or issues, except judicial offices, such contests shall be heard and determined by a judge of the court of common pleas of the county in which the contest arose. In the case of a contest for a judicial office within a county such contest shall be heard by the court of appeals of the district in which such county is located. If any contestant shall allege prejudice on the part of the judges of the court of appeals or common pleas, assigned by law to hear such appeal, then the chief justice of the supreme court, upon application of any such contestants and for good cause shown, may assign a judge or judges from another court to hear such contest."

(113 v. 307, Sec. 166. Eff. Jan. 1, 1930.)

Section 4785-167. Filing Contest Petition.

"Such a contest shall be commenced by the filing of a petition therefor with the clerk of the appropriate court signed by at least twenty-five voters who voted at the last election for or against a candidate for the office or for or against the issue being contested, or by the defeated candidate for said nomination or election, within fifteen days after the results of any such nomination or election have been ascertained and announced by the proper authority; or if there be a recount, of such nomination or election have been ascertained and announced by the proper authority. Such petition shall be verified by the oath of at least two such petitioners, or by the oath of the defeated candidate filing the same, as the case may be, and shall set forth the grounds for such contest. Said petition shall be accompanied by a bond with surety to be approved by the clerk of the appropriate court in a sum sufficient, as determined by him, to pay all the costs of the contest. The contestor and the person whose right to the nomination or election to such office is being contested, to be known as the contestee, shall be liable to the officers and witnesses for the costs made by them respectively; but if the results of the nomination or election be confirmed or the petition be dismissed, or the prosecution fail, judgment shall be rendered against the contestor for the costs; and if the judgment be against the contestee or if the results of the nomination or election be set aside then the county shall pay the costs as other election expenses are paid." (113 v. 307, Sec. 167, Eff. Jan. 1, 1930.)

Section 4785-168. Fix Time for Trial.

"The court shall fix a suitable time for hearing such contest, not less than fifteen nor more than thirty days after the filing of the petition; and shall cause a copy of the contestor's petition to be served upon the

contestee, or upon the chairman of the committee taking the other side in advocacy of or opposition to any issue, as the case may be, in the same manner as a summons in a civil action. The contestee shall have ten days from the time service has been made upon him in which to answer the relation, and the contestor shall have five days in which to reply to the answer of the contestee. All parties may be represented by counsel and the hearing shall proceed at the time fixed, unless postponed by the judge or judges hearing the case for good cause shown by either party by affidavit; or unless the judge shall adjourn to such time, not more than thirty days thereafter, of which adjournment the parties interested shall take notice."

Section 4785-169. Trial Proceedings.

"The proceedings shall be similar to those in judicial proceedings in so far as practicable, and shall be under the control and direction of the court which shall hear and determine the matter without a jury, with power to order or permit amendment to the petition or proceedings as to form or substance, and to allow adjournments for not more than thirty days, for the benefit of either party, on such terms as to costs and otherwise as shall seem reasonable to the court, the grounds for such adjournments being shown by affidavit. The hearing shall proceed expeditiously and the total of such adjournments shall not exceed thirty days after the date set for the original hearing." (113 v. 307, Sec. 169. Eff. Jan. 1, 1930.)

Section 4785-170. Witnesses and Evidence.

"The said court shall have authority and power to summon and compel the attendance of witnesses, includiing officers of such election, and compel the production of all ballot boxes, lists, books, ballots, tally sheets and other records, papers and documents, which may be required at such hearing. The style and form of summons and subpoenas and the manner of service and the fees of officers and witnesses shall

be the same as are provided by law in other cases, in so far as the nature of the proceedings admits. The court may require any election officer to answer any questions pertinent to the issue relating to the conduct of the making of the returns; and any witness who voted at the election may be required to answer touching his qualification as a voter and for whom he voted." (113 v. 307, Sec. 170. Eff. Jan. 1, 1930.)

Section 4785-171. Judgment of Court.

"Upon completion of the trial the court shall pronounce judgment as to which of such candidates was duly nominated or elected, or whether such issue was duly approved or rejected by the voters; except that in the case of the contest of election of a member of the General Assembly such judgment shall not be pronounced by the court; but a transcript of all testimony taken and all evidence adduced in such contest shall be filed with the clerk of the branch of such legislative body to which the contestee was declared elected, which shall determine the election and qualification of its own members. Any person so declared nominated or elected by the court shall be entitled to his certificate of nomination or election. A certified copy of the order of such court shall constitute such certificate. If the judgment be against the contestee or incumbent and he has already received a certificate of nomination or election, the judgment of the court shall work a cancellation of such certificate. If the court find that no person was duly elected, the judgment shall be that the election be set aside." (113 v. 307, Sec. 171. Eff. Jan. 1, 1930.)

Section 4785-172. Appeal to Supreme Court.

"The person against whom the judgment is ren dered may prosecute error by petition in error, within twenty days, to the supreme court of Ohio; but such error proceedings shall not supersede the execution of the judgment of the court. Such error proceedings

shall take precedence over all other causes upon the calendar, and shall be set down for hearing and determination at the earliest convenient date. The laws and rules of the court governing error proceedings shall apply in the judgment of the lower court be affirmed, the supreme court shall order the judgment of such lower court to be enforced, if the party against whom the judgment is rendered is in possession of the office." (113 v. 307, Sec. 172. Eff. Jan. 1, 1930.)

Section 4785-173. Testimony; Supreme Court

"In contests of election in the supreme court, all testimony shall be in the form of depositions. The contestor shall take and file his testimony within twenty days from the date of filing the petition, unless further time be allowed by the court or judge hearing the contest. The contestee, or the committee defending the issue, shall file his or its testimony within twenty days from the expiration of the contestor's time, unless such court or judge shall allow further time. The court may render such judgments and make such orders as the law and facts shall warrant, including judgment of ouster and induction, and the judgment of the supreme court shall be decisive of the contest." (113 v. 307, Sec. 173. Eff. Jan. 1, 1930.)

RULE XX—RULES OF PRACTICE, SUPREME COURT OF OHIO

REHEARINGS—ISSUANCE OF MANDATES

SECTION 1. "No motion can be made or heard for a rehearing. Application for rehearing of any cause or motion shall be made within fourteen days. after the announcement of the decision. Such application may be either printed or typewritten, and nine copies thereof filed with the Clerk, and shall be confined strictly to reasons for a rehearing. No re-

argument of the cause on such application will be considered."

SECTION 2. "When typewritten applications are filed the same shall meet the requirements of Section 14 of Rule II."

SECTION 3. "Upon filing an application for rehearing of a cause on the General Docket, counsel for the applicant shall give written notice thereof to the Reporter of the Supreme Court."

SECTION 4. "One week after the announcement of the decision of any cause on the General Docket the Clerk shall issue a Mandate as provided by the entry of this Court; and one week after announcement of decision of a motion to certify the record or for leave to file *an appeal*, if such motions be overruled, the Clerk shall issue a certified copy of the entry of this Court to the lower Court; provided, that if the Clerk be notified, within one week after announcement of a decision on the motion or general docket that application for a rehearing will be filed, such Mandate or certified copy of entry shall be held until such application be disposed of by the Court or the time for filing the same has expired and shall be then forthwith issued. If an application be granted the former entry of this Court shall be thereby vacated and no Mandate or certified copy of entry shall issue until such rehearing has been had and the case or motion has again been decided."